

**NOTICE FOR POSTING**  
**MEETING OF**  
**BOARD OF ADJUSTMENT, PANEL C**  
**MONDAY, MARCH 13, 2006**

**Briefing: 10:00 A.M. 5ES**  
**Public Hearing: 1:00 P.M. COUNCIL CHAMBERS**

**Purpose:** To take action on the attached agenda, which contains the following:

- 1) Zoning Board of Adjustment appeals of cases the Building Official has denied.
- 2) And any other business that may come before this body and is listed on the agenda.

**\* All meeting rooms and chambers are located in Dallas City Hall, 1500 Marilla, Dallas, Texas 75201**

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3-13-2006

ZONING BOARD OF ADJUSTMENT, PANEL C  
MONDAY, MARCH 13, 2006  
AGENDA

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BRIEFING	<b>5ES</b>	10:00 A.M.
LUNCH		
PUBLIC HEARING	<b>COUNCIL CHAMBERS</b>	1:00 P.M.

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**Donnie Moore, Chief Planner**  
**Jennifer Hiromoto, Senior Planner**  
**Steve Long, Board Administrator**

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**MISCELLANEOUS ITEMS**

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	Approval of the <b>Monday, February 13, 2006</b> Board of Adjustment Public Meeting Minutes	M1
Unassigned	3907 Odessa Street <b>REQUEST:</b> Application of Virginia Lozano, represented by Ernest Warnock, to waive the filing fees to be submitted in conjunction with potential board of adjustment appeals	M2

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**UNCONTESTED CASES**

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BDA 056-088	4501 Pomona Road <b>REQUEST:</b> Application of James Mattingly for a special exception to the fence height regulations and a variance to the front yard setback regulations	1
BDA 056-091(J)	6035 Vanderbilt Avenue <b>REQUEST:</b> Application of Rob Baldwin for special exception to allow an additional dwelling unit	2
BDA 056-095(J)	1201 Ewing Avenue <b>REQUEST:</b> Application of SDC Luxar Inv. Inc. represented by Jay Oji for a variance to the height requirements and a special exception to the parking regulations	3

BDA 056-096	5655 W Lovers Lane <b>REQUEST:</b> Application of Merriman Assoc/Arch represented by Eduardo Zambrana for a special exception to the landscape regulations	4
BDA 056-100(J)	2022 N Fitzhugh Avenue <b>REQUEST:</b> Application of Masterplan represented by Karl A. Crawley for a special exception to the parking Regulations	5
BDA 056-102	824 Reverchon Drive <b>REQUEST:</b> Application of Felipe Ortiz for a variance to the front yard setback regulations	6

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**HOLDOVER CASE**

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BDA 056-019(J)	732 West Clarendon Drive <b>REQUEST:</b> Application of Jesus Gonzalez for a variance to the front yard setback regulations	7
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## EXECUTIVE SESSION NOTICE

The Commission/Board may hold a closed executive session regarding any item on this agenda when:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the Commission/Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices.. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay, or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex. Govt. Code §551.086]

**(Rev. 6-24-02)**

**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C February 13, 2006 public hearing minutes.

**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** Unassigned

**REQUEST:** To waive an additional \$1,200.00 filing fee to be submitted in conjunction with potential Board of Adjustment appeals

**LOCATION:** 3907 Odessa Street

**APPLICANT:** Virginia Lozano, represented by Ernest E. Warnock

**STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:**

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
  - In making this determination, the board may require the production of financial documents.
- The applicant submitted a letter to staff requesting a waiver of the \$1,200.00 filing fee to be submitted in conjunction with a possible Board of Adjustment issue (see Attachment A). This letter contained some details on the applicant's finances.

**Timeline:**

June 15, 2005      The applicant submitted a letter requesting a fee waiver of \$1,200.00 for a Board of Adjustment application that may be requested at the address referenced above.

June 21, 2005:      The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel C.

- June 21, 2005: The Board Administrator wrote the applicant a letter that conveyed the following information:
- the public hearing date and panel that will consider the request (where his attendance is strongly encouraged);
  - the criteria/standard that the Board will use in their decision to approve or deny the request; and
  - the importance of evidence submitted by the applicant with regard to the Board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board.
- August 16, 2005: The Board Adjustment Panel C conducted a public hearing and granted the request for a waiver of filing fees in the amount of \$1,200.00.
- Sept. 7, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents.
- Feb. 15, 2006: The Building Inspection Development Code Specialist forwarded a case file to the Board Administrator that included appeals for: 1) a special exception to the side yard regulations; 2) a special exception for a second dwelling unit; 3) a variance to the side yard setback regulations; and 4) a variance to the floor area ratios.
- Feb. 15, 2006: The Board Administrator contacted the applicant's representative and established that only \$1,200.00 of the total \$2,400.00 filing fee was waived by the Board of Adjustment in August of 2005. The administrator explained to the applicant's representative that he had an option of requesting a fee reimbursement that would be considered on the same day as the appeals that would be considered in March, or to request a fee waiver in March whereby the variance and special exception requests would follow in April or May of 2006.
- Feb. 16, 2006 The applicant's representative submitted a letter requesting a fee *waiver* for a Board of Adjustment application that may be requested at the address referenced above (see Attachment A).
- Feb. 21, 2006: The Board Administrator wrote the applicant's representative a letter that conveyed the following information:
- the public hearing date and panel that will consider the request;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;

- the noon, March 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

**FILE NUMBER:** BDA 056-088

**BUILDING OFFICIAL'S REPORT:**

Application of James Mattingly for a special exception to the fence height regulations and a variance to the front yard setback regulations at 4501 Pomona Road. This property is more fully described as Lot 12B in City Block O/4984 and is zoned R-10(A), which limits the height of a fence in the front yard to 4 feet and requires a front yard setback of 30 feet. The applicant proposes to construct an 8 foot fence in the required front yard setback which would require a special exception of 4 feet to the fence regulations, and to construct a swimming pool and provide a 15 foot 4 inch front yard setback which would require a variance of 14 feet 8 inches to the front yard setback regulations. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (a) (6) and Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions and variances.

**LOCATION:** 4501 Pomona Road

**APPLICANT:** James Mattingly

**REQUESTS:**

- The following appeals have been made in this application:
  1. A variance to the front yard setback regulations of 14' 8" is requested in conjunction with constructing and maintaining a 490 square foot (or 35' x 12') swimming pool in the site's 30' Catawba Road front yard setback; and
  2. A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining an 8' open metal picket fence and an 8' solid concrete panel fence/wall in the 30' front yard setback on Catawba Road.

The site is currently being developed as a two story single family home that, according to calculations made by the Board Administrator from the submitted site plan, has an approximately 3,200 square foot building footprint.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape,

or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

**GENERAL FACTS (related to the variance):**

- A 30' front yard setback is required in the R-10 (A) zoning district.
- The site has two 30' front yard setbacks: one on Pomona Road, the other on Catawba Road.
- The proposed swimming pool would be located 15' 4" from the Catawba Road front property line or 14' 8" into the 30' front yard setback.
- The existing house and proposed swimming pool are in/would be in compliance with the site's 30' Pomona Road front yard setback.
- The Dallas Development Code states the following with regard to front yard provisions for residential district:
  - If a corner lot in a single family, duplex, or agricultural district has two street frontages of equal distance, one frontage is governed by the front yard regulations of this section, and the other frontage is governed by the side yard regulations. If the corner lot has two street frontages of unequal distance, the shorter frontage is governed by this section, and the longer frontage is governed by side yard regulations. Notwithstanding this provision, the continuity of the established setback along street frontage must be maintained.
- The site is deemed to have two front yard setbacks in order to maintain the established setback of lots/homes to the northwest and northeast of the site that "front" Catawba Road and Pomona Road.
- According to the City of Dallas Plats Administrator, the subject site and the lot immediately north of the subject site were platted in April of 1998 (S-978126).
- According to calculations taken from the submitted site plan, approximately 200' square feet of the 490 square foot swimming pool would be located in the Catawba Road front yard setback.
- The subject site is flat, irregular in shape, and according to the application, 0.31 acres in area. The site is zoned R-10(A) where lots are typically 10,000 square feet in area. The subject site has two, 30' front yard setbacks, and one 20" oak tree that the applicant contends limits the placement of the swimming pool outside the site's two front yard setbacks.
- DCAD records indicate that the site is developed with the following:
  - a single family structure built in 2005 with 4,838 square feet of living space;
  - a 534 square foot attached garage; and
  - a 307 square foot cabana.
- The applicant submitted information beyond what was submitted with the original application (see Attachments A and B). This information included a "supplemental information" document (with details about the request, a comparison of neighboring developed lots, reason why the requests should be granted, photos of the site and

surrounding area, and a petition signed by neighbors/owners in support of the request) and a landscape plan.

**GENERAL FACTS (related to the fence special exception):**

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The site has two 30' front yard setbacks: one on Pomona Road, the other on Catawba Road.
- The proposed fence/wall exceeding 4' in height on the subject site is limited to a location in the site's Catawba Road front yard setback that will function somewhat as a screen around the proposed swimming pool in the front yard setback.
- The following additional information was gleaned from the submitted site plan/fence elevation:
  - The fence/wall in the Catawba Road front yard setback totals approximately 140 linear feet and is staggered in design.
  - The fence/wall parallel to Catawba Road ranges at distances between 0' – 6' from the property line (or about 21' – 27' from the pavement line).
- One single family home would have indirect frontage to the proposed fence/wall.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above 4' in height and located in a front yard setback in the area.
- The applicant submitted information beyond what was submitted with the original application (see Attachments A and B). This information included a "supplemental information" document (with details about the request, a comparison of neighboring developed lots, reason why the requests should be granted, photos of the site and surrounding area, and a petition signed by neighbors/owners in support of the request) and a landscape plan.
- The submitted landscape plan indicates the following landscape materials to be located on the street side of the proposed fence/wall:
  - 2 Cypress (6" cal);
  - 1 Bald Cypress (6" cal);
  - 20 Compact Nandina (5 gal);
  - 8 Fig Ivy (5 gal); and
  - 3 Ornamental Grass.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-10 (A) (Single family district 10,000 square feet)  
North: R-10 (A) (Single family district 10,000 square feet)  
South: R-10 (A) (Single family district 10,000 square feet)  
East: R-10 (A) (Single family district 10,000 square feet)  
West: R-10 (A) (Single family district 10,000 square feet)

### **Land Use:**

The subject site is being developed with a single family home. The areas to the north, south, and west are developed with single family uses; and the area to the east is developed with a school (Williams Elementary School).

### **Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

### **Timeline:**

- Jan. 24, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Feb. 15, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Feb. 16, 2006: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the March 3<sup>rd</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Feb. 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief

Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

No review comment sheets with comments were submitted in conjunction with this application.

Feb. 28, 2006: The Building Inspection Development Code Specialist submitted a revised Building Official's Report. The amended report amended the applicant's original request to encroach into the front yard setback from a *special exception* to the front yard regulations to preserve a tree to a *variance* to the front yard setback regulations.

Feb. 27 & March 1, 2006 The applicant submitted information beyond what was submitted with the original application (see Attachments A and B).

**STAFF ANALYSIS (related to the variance):**

- The subject site is flat, irregular in shape, and according to the application, 0.31 acres (or about 13,500 square feet) in area.
- The site is zoned R-10(A) where lots are typically 10,000 square feet in area. The subject site has two, 30' front yard setbacks, and one 20" oak tree that the applicant contends limits the placement of the swimming pool outside the front yard setbacks.
- The site is currently being developed with a two story single family home that, according to calculations made by the Board Administrator from the submitted site plan, has an approximately 3,200 square foot building footprint, and according to DCAD has 4,838 square feet of living space.
- According to calculations taken from the submitted site plan, the proposed swimming pool would be 490 square feet in area of which about 200 square feet would be located in one of the site's two front yard setbacks.
- The applicant has the burden of proof in establishing the following related to the front yard variance request:
  - That granting the variance to the front yard setback regulations of 14' 8" to construct and maintain a 490 square foot swimming pool in one of the site's two front yard setbacks will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance to the front yard setback regulations of 14' 8" requested to construct and maintain a 490 square foot swimming pool is necessary to permit development of the subject site (being developed with a single family home with a building footprint of about 3,200 square feet) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-10 (A) zoning classification.
  - The variance to the front yard setback regulations of 14' 8" requested to construct and maintain a 490 square foot swimming pool would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site)

not permitted by this chapter to other parcels of land in districts with the same R-10 (A) zoning classification.

- As of March 3rd, no letters had been submitted to staff in opposition to the requests, and a petition signed by 9 neighbors/owners had been submitted in support of the requests.
- If the Board were to grant the front yard variance request of 14' 8", imposing a condition whereby the applicant must comply with the submitted site plan, the only structure that would be permitted to encroach into a front yard setback would be a swimming pool that would be 15' 4" from the site's Catawba Road front property line (or 14' 8" into the 30' Catawba Road front yard setback).

**STAFF ANALYSIS (related to the fence special exception):**

- A scaled site plan/fence elevation has been submitted that documents the location of the proposed fence/wall in the Catawba Road front yard setback relative to the entire lot/subject site. (About 140' of the proposed fence/wall is requested to exceed 4' in height and be located in the Catawba Road front yard setback).
- A scaled site plan/fence elevation has been submitted that documents the height and the proposed fence/wall: 8 feet. The site plan/fence elevation specifies the materials of a portion of the fence/wall to be "conc. panel fence," however, another portion of the fence/wall that appears to be open is not specified on the elevation. (The applicant has described this fence in the submitted "supplemental information" document to be a "perimeter 8-foot fence with cement board and metal pickets.") The site plan denotes that of the approximately 140' length of the proposed fence/wall, about 120' is to be of the solid concrete material.
- Landscape materials have been identified on a submitted landscape plan that will be adjacent to the proposed fence/wall.
- One single family home would have indirect frontage to the proposed fence/wall.
- No fences about 4' in height located in a front yard setback were noted in the immediate vicinity of the subject site.
- As of March 3rd, no letters had been submitted to staff in opposition to the requests, and a petition signed by 9 neighbors/owners had been submitted in support of the requests.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the proposed fence/wall that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 4' with conditions imposed that the applicant complies with the submitted site plan/fence elevation and landscape plan would assure that the proposed fence/wall is maintained as shown on these documents.

**FILE NUMBER:** BDA 056-091(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Rob Baldwin for special exception to allow an additional dwelling unit at 6035 Vanderbilt Avenue. This property is more fully described as Lot 9 in City Block 8/2853 and is zoned CD-11 which limits the number of dwelling units to one. The applicant proposes to construct an additional dwelling unit which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-4.209 (b)(6)(E)(i) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 6035 Vanderbilt Avenue

**APPLICANT:** Rob Baldwin

**REQUEST:**

- A special exception to the single family use regulations is requested in conjunction with constructing an additional "dwelling unit" on a site developed with a single family home. The proposed additional "dwelling unit" in this appeal is a 2-story garage/studio structure.

**STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT IN A SINGLE FAMILY ZONING DISTRICT:**

The board may grant a special exception within the single family use regulations to authorize an additional dwelling unit in any single family zoning district when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**GENERAL FACTS:**

- "Single family" use is defined in the Dallas Development Code as "one dwelling unit located on a lot," however, the code allows the Board of Adjustment to grant a special exception to this provision to allow an additional dwelling unit when, in their opinion, the additional dwelling unit will not:
  - 1) be used as rental accommodations; or
  - 2) adversely affect neighboring properties.

- The subject site is 8,840 square feet in area and developed with, according to DCAD records, a single family home that is in average condition built in 1938 with 2,436 square feet of living area, and a detached garage and servant's quarters.
- The site plan indicates that the additional "dwelling unit" structure has a building footprint of approximately 26' x 23' or is about 598 square feet in area.
- The floor plan shows a garage area of about 506 square feet or 22' x 23'. The "dwelling unit" area on the second floor is about 598 square feet or 26' x 23'.
- The site plan indicates that the additional "dwelling unit" structure will be located 5' from the nearest property line which in this case is the side property line on the east and the rear property line to the north.
- The submitted elevation indicates that the 2-story additional "dwelling unit" structure will be approximately 18' in height.
- The floor plan indicates space for a 2-car garage, stairs, studio, closet, kitchenette, and bath.
- If this request is granted, a completed deed restriction stating that the additional dwelling unit on the site will not be used for rental accommodations must be submitted to the Board Administrator, approved by the City Attorney's Office as to form, and filed in the deed records of the applicable county (in this case, Dallas County) before the applicable permits for this additional dwelling unit can be issued by the City.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	CD-11 (Conservation District M-Streets East Single family residential 7,500 square feet)
<u>North:</u>	R-7.5(A) (Single family residential 7,500 square feet)
<u>South:</u>	CD-11 (Conservation District M-Streets East Single family residential 7,500 square feet)
<u>East:</u>	CD-11 (Conservation District M-Streets East Single family residential 7,500 square feet)
<u>West:</u>	CD-11 (Conservation District M-Streets East Single family residential 7,500 square feet)

### **Land Use:**

The subject site is developed with a single family home. The areas to the north, south, east and west are developed with single family uses.

### **Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

### **Timeline:**

January 27, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 16, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 16, 2006: The Board Administrator contacted the applicant via email and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the March 3<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

February 28, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Hiromoto, Development Services Department Code Specialist, Chief Arborist, and the Assistant City Attorney to the Board.

No review comment sheets with comments were submitted in conjunction with this application.

March 2, 2006 The applicant submitted additional information regarding his request (Attachment A). The applicant also provided seven letters in support of his request (see Hearing Letters folder).

**STAFF ANALYSIS:**

- The proposed 2-story “dwelling unit” structure appears to meet all setback, lot coverage, and height regulations.
- The proposed structure will have a garage that is accessed internally through the lot.
- The submitted site plan shows a 5’ setback to the east side and rear as required in the CD-11 regulations for accessory structures exceeding 15’ in height.
- The Accessory Structure code limits the area of accessory structures to 25% of the primary structure’s area, excluding the area for parking. The proposed structure meets this requirement at 24.5% of the primary structure.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations and that will not adversely affect neighboring properties.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.
- If the Board were to approve the special exception request, subject to imposing a condition that the applicant comply with the submitted elevation and site plan, the proposed “dwelling unit” structure would be restricted to the specific location, size, and height shown on the plans, which in this case is a 2-story garage/studio structure.

**FILE NUMBER:** BDA 056-095(J)

**BUILDING OFFICIAL'S REPORT:**

Application of SDC Luxar Inv. Inc. represented by Jay Oji for a variance to the height requirements and a special exception to the parking regulations at 1201 Ewing Ave. This property is more fully described as a tract of land in City Block 1/3747 and is zoned MF-2(A), which limits the overall height of a structure to 38 feet 6 inches due to the residential proximity slope and requires parking to be provided with new construction. The applicant proposes to construct a multi-family project and provide 131 of the 167 required parking spaces which would require a special exception of 36 spaces or 21.5% and to provide a height of 41 feet 3 inches which would require a variance of 2 feet 9 inches to the height regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) and 51A-4.311 (a) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions and grant variances.

**LOCATION:** 1201 Ewing Ave.

**APPLICANT:** SDC Luxar Inv. Inc.  
Represented by Jay Oji

**REQUEST:**

- A special exception to the off-street parking regulations of 36 spaces (or 21.5%) and a variance to the height regulations of 2'9" are requested in conjunction with constructing apartments.

**STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:**

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
  - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) impose restrictions on access to or from the subject property; or
  - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
  - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
  - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

#### **STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial

reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

#### **GENERAL FACTS (PARKING SPECIAL EXCEPTION):**

- The request site is currently undeveloped.
- The applicant will provide 131 parking spaces of the 167 spaces required with the construction of 80 unit apartments.
- The Dallas Development Code states the parking requirements for the following uses:
  - 1 space per 500 square feet of multifamily dwelling units;
  - Not less than 1 or more than 2 ½ spaces are required for each dwelling unit in a multifamily structure under 36 feet in height.
- The applicant has provided a table of parking analysis showing the square footage of each type of unit and the count of such units.
- The applicant is proposing to provide 131 (or 78.4%) of the total 167 required off-street parking spaces. The maximum allowed by special exception is 25%.
- There are 6 DART bus stops and 2 DART bus routes within 500 feet of the request site (see Attachment A).

#### **GENERAL FACTS (HEIGHT VARIANCE):**

- The request site is currently undeveloped.
- The property is zoned MF-2(A) and the properties to the west, east, and south are zoned R-7.5(A), which require any development on the request site to respect a 1-to-3 residential proximity slope.
- The maximum height allowed is 36' in the MF-2(A) zoning district.
- The building code defines to the midpoint of the roof with a gable, hip, or gambrel roof shape.
- Residential proximity slope requires a setback for development on properties adjacent to residential districts at a specified ratio or distance.
- The proposed multifamily development will have 2- and 3-story structures according to the elevations submitted.
- The submitted site plan shows the location of the proposed multifamily development.
- The applicant has clarified that the northeast building that is adjacent to Ewing Avenue is the only building that is seeking relief from the Residential Proximity Slope. That proposed structure will have a height of 41'3" to the highest point.
- The applicant provided a topographic survey that indicates the request site is at an elevation of 530' adjacent to Ewing Avenue and at 500' at the southwest corner of the site.
- The site is sloped, rectangular in shape (330' x 630'), and approximately 209,700 square feet in area.
- DCAD indicates that the request site is undeveloped.

#### **BACKGROUND INFORMATION:**

## **Zoning:**

<b><u>Request Site:</u></b>	MF-2 (A) (Multifamily Residential)
<b><u>North:</u></b>	CS and CR (Commercial Service and Community Retail)
<b><u>South:</u></b>	R-7.5(A) (Single Family Residential 7,500 Square Feet)
<b><u>East:</u></b>	R-7.5(A) (Single Family Residential 7,500 Square Feet)
<b><u>West:</u></b>	R-7.5(A) (Single Family Residential 7,500 Square Feet)

## **Land Use:**

The request site is undeveloped. The area to the north is developed with office and personal service uses; the area to the east, and south are developed with single family residential; the area to the west is undeveloped.

## **Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject sites.

## **Timeline:**

January 26, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 16, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 16, 2006: The Board Administrator contacted the applicant via letter and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the March 3<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the March public hearing after considering the information/evidence and

testimony presented to them by the applicant and all other interested parties.

February 28, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Hiromoto, Development Services Department Code Specialist, Chief Arborist, and the Assistant City Attorney to the Board.

A review comment sheet was submitted by the Development Services Transportation Engineer in conjunction with this application dated March 3, 2006. The engineer commented he has no recommendation due to lack of information.

February 27, 2006 The applicant submitted a revised elevation (Attachment B).

March 2, 2006 The applicant submitted a letter providing additional information about the request (Attachment C).

**STAFF ANALYSIS (PARKING SPECIAL EXCEPTION):**

- The Development Services Transportation Engineer provided comments on March 3, 2006 stating he has no recommendation due to a lack of information.
- Ewing Avenue is indicated in the Thoroughfare Plan as an undivided Community Collector with 60 feet of right of way.
- Marsalis Avenue, located west of the request site, is indicated in the Thoroughfare Plan as divided Major Arterial with 90-100 feet of right of way.
- The applicant submitted a parking analysis table on the site plan that indicates the number of units at different floor areas to demonstrate the parking calculations.
- Granting this request, subject to the condition that the special exception automatically and immediately terminates if and when the multifamily use on the site is changed or discontinued, would allow the construction of 80 units of multifamily residential.
- The applicant has the burden of proof in establishing the following as related to the request for a special exception of 36 parking spaces:
  - The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.

- The availability of public transit and the likelihood of its use.
- The feasibility of parking mitigation measures and the likelihood of their effectiveness.

### **STAFF ANALYSIS (HEIGHT VARIANCE):**

- The revised elevations indicate that the proposed multifamily building is approximately 144' wide and 46' deep (25' on the side adjacent to Ewing Ave that does not meet RPS and 21' on the side internal to the request site).
- The revised elevations indicate that the depth of the building which encroaches into the RPS setback does so by approximately 7'.
- A height of 41'3" would require a setback of 123'9" from the R-7.5(A) district property's boundary lines to the east. The site plan shows a setback of approximately 116'9" to the point of that height.
- The subject building requires a height variance due to the RPS because of the requested height and setback to the R-7.5(A) district to the east.
- The site plan shows the proposed development would construct eight buildings for 80 units, some covered parking spaces, and amenities (basketball, pool, and playground).
- Granting this variance, subject to the submitted site plan and revised elevation, would allow a multifamily development to construct one 41'3" multifamily building that exceeds the Residential Proximity Slope by 2'9".
- The applicant has the burden of proof in establishing the following:
  - That granting the variance of 2'9" to the height regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The height variance of 2'9" is necessary to permit development of the subject site (that is sloped, rectangular in shape (330' x 630'), and approximately 207,900 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(A) zoning classification.
  - The height variance of 2'9" would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MF-2(A) zoning classification.

**FILE NUMBER:** BDA 056-096

**BUILDING OFFICIAL'S REPORT:**

Application of Merriman Assoc/Arch represented by Eduardo Zambrana for a special exception to the landscape regulations at 5655 W Lovers Lane. This property is more fully described as Lot 1A in City Block B/5023 and is zoned CR which requires mandatory landscaping for new construction. The applicant proposes to construct a building and provide an alternate landscape plan which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-10.110 of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 5655 W Lovers Lane

**APPLICANT:** Merriman Assoc/Arch  
Represented by Eduardo Zambrana

**REQUEST:**

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an approximately 3,800 square foot bank (Chase Bank). The site is currently developed with an existing retail use (Rutherford's Silver Vault).

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:**

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

## **GENERAL FACTS:**

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
  - The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
  - On February 27, 2006, the City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment A). The memo stated the following:
    - The applicant is requesting relief from the landscape requirements of Article X (The Landscape Regulations), more specifically, relief from the required 10' wide residential landscape buffer strip along the north side of the property.
    - The special exception request is triggered by new construction.
    - Deficiencies:
      1. The applicant is required to provide a 10' wide landscape buffer strip where there is residential adjacency which must include one plant group for each 50 linear feet of adjacency. (3 plant groups would be required for this site with 150 linear feet of adjacency).

The applicant is proposing to provide 0 plant groups immediately adjacent to the property line, however is proposing to provide some plant materials ("a few small, ornamental trees and some other low plant materials") between a portion of the parking and the building.
- Factors for consideration:
- One of the proposed design standards (screening of off-street parking) needs to be moved inside the property, or they need to choose a second design standard.
  - According to DCAD, the subject site is developed with a "retail strip" that was built in 1955.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	CR (Community Retail)
<u>North:</u>	R-7.5(A) (Single Family District 7,500 Square Feet)
<u>South:</u>	CR (Community Retail)
<u>East:</u>	CR (Community Retail)
<u>West:</u>	CR (Community Retail)

### **Land Use:**

The subject site is developed with a retail use (Rutherford's Silver Vault). The area to the north is developed with single family uses, and the areas to the east, south, and west are developed with retail uses.

## **Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

## **Timeline:**

Undated: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

Feb. 15, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

Feb. 16, 2006: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the February 24th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the March 3<sup>rd</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Feb. 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

No review comment sheets with comments were submitted in conjunction with this application.

Feb. 27, 2006      The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment A).

**STAFF ANALYSIS:**

- An alternate landscape plan has been submitted with this request that, according to the City of Dallas Chief Arborist, is deficient in providing the 10' wide residential landscape buffer strip requirement of the landscape regulations and (unless an amendment is made to the submitted alternate landscape plan) two required design standards of the landscape regulations .
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the landscape regulations (i.e. providing the required 10' wide landscape buffer strip with 3 plant groups and two design standards) will unreasonably burden the use of the property (in this case, if approved, with an approximately 3,800 square foot bank).
  - The special exception (whereby none of the required 10' wide landscape buffer strip, and only 1 of the required 2 design standards are proposed to be provided) will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the site could be developed with the a new bank, and would be "excepted" from the provision of 10' wide landscape buffer strip requirement of the landscape regulations, and the full provision of 2 design standards on the site.

**FILE NUMBER:** BDA 056-100(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Masterplan represented by Karl A. Crawley for a special exception to the parking regulations at 2022 N Fitzhugh Avenue. This property is more fully described as Lot 6 in City Block 5/695 and is zoned MF-2(A) which requires parking to be provided for new construction. The applicant proposes to construct a multi-family project and provide 12 of the required 15 off-street parking spaces which would require a special exception of 3 parking spaces or 20%. Referred to the Board of Adjustment in accordance with Section 51A-4.311 (a) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 2022 N Fitzhugh Avenue

**APPLICANT:** Masterplan  
Represented by Karl A. Crawley

**REQUEST:**

- A special exception to the off-street parking regulations of 3 spaces (or 20%) is requested in conjunction constructing apartments.

**STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:**

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.

- (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
  - 4) In granting a special exception, the board may:
    - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
    - (B) impose restrictions on access to or from the subject property; or
    - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
  - 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
  - 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
    - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
    - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

### **GENERAL FACTS:**

- The request site is currently developed with a multifamily use.
- The applicant will provide 12 parking spaces of the required 15 spaces required with the construction of 6 unit apartments.
- The Dallas Development Code states the parking requirements for the following uses:
  - 1 space per 500 square feet of multifamily dwelling units;
  - Not less than 1 or more than 2 ½ spaces are required for each dwelling unit in a multifamily structure under 36 feet in height.
- The applicant has indicated in a letter (Attachment B) that each of the six units will be approximately 1,300 square feet, which would require 2 ½ spaces each.
- The applicant is proposing to provide 12 (or 80%) of the total 15 required off-street parking spaces. The maximum allowed by special exception is 25%.
- There are 0 DART bus stops within 500 feet of the request site (see Attachment A). There are 4 DART bus stops on Capitol, located approximately 1,000 feet from the request site.

- The site is flat, rectangular in shape (50' x 180'), and approximately 9,000 square feet in area.
- DCAD indicates that the request site is developed with a 4-unit, 3,432 square foot apartment building in average condition built in 1948.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<b><u>Request Site:</u></b>	MF-2 (A) (Multifamily Residential)
<b><u>North:</u></b>	MF-2 (A) (Multifamily Residential)
<b><u>South:</u></b>	MF-2 (A) (Multifamily Residential)
<b><u>East:</u></b>	MF-2 (A) (Multifamily Residential)
<b><u>West:</u></b>	MF-2 (A) (Multifamily Residential)

### **Land Use:**

The request site is developed with a multifamily use. The areas to the north and south are developed with multifamily; the area to the east and west are developed with single family uses; and the area to the immediate west is undeveloped.

### **Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject sites.

### **Timeline:**

January 27, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 16, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 16, 2006: The Board Administrator contacted the applicant via letter and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the March 3<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;

- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

February 28, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Hiromoto, Development Services Department Code Specialist, Chief Arborist, and the Assistant City Attorney to the Board.

A review comment sheet was submitted by the Development Services Transportation Engineer in conjunction with this application dated March 3, 2006 stating that he has no recommendation.

March 3, 2006      The applicant submitted a letter providing additional information about the request (Attachment B).

**STAFF ANALYSIS:**

- The Development Services Transportation Engineer provided comments on March 3, 2006 stating he has no recommendation.
- Fitzhugh Avenue is indicated in the Thoroughfare Plan as an undivided Major Arterial with 90-100 feet of right of way.
- The site plan shows the location of the enclosed parking spaces within the units at a distance of approximately 19' from the property line. The applicant has indicated that the garage doors will be recessed to meet the 20' enclosed parking space setback.
- The site plan indicates parking spaces with a triangle shape. Two are shown in the unit as garage spaces. Two are also shown in the driveway. Required parking is not allowed in a front yard per the Dallas Development Code. Therefore, the only parking spaces that count towards the parking requirements are inside the garage.
- The site plan shows that a portion of the building above the first level will hang over by approximately 5' as indicated by a dashed line. The overhanging portions do not encroach into the 15' front setback of the MF-2(A) zoning.
- Granting this request, subject to the condition that the special exception automatically and immediately terminates if and when the multifamily use on the site is changed or discontinued, would allow the construction of six multifamily residential units.

- The applicant has the burden of proof in establishing the following as related to the request for a special exception of 3 parking spaces:
  - The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - The availability of public transit and the likelihood of its use.
  - The feasibility of parking mitigation measures and the likelihood of their effectiveness.

**FILE NUMBER:** BDA 056-102

**BUILDING OFFICIAL'S REPORT:**

Application of Felipe Ortiz for a variance to the front yard setback regulations at 824 Reverchon Drive. This property is more fully described as Lot 15 in City Block 4/5119 and is zoned R-7.5(A) which requires a front yard setback of 25 feet. The applicant proposes to construct a swimming pool and provide a 13 foot 10 inch front yard setback which would require a variance of 11 feet 2 inches. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 824 Reverchon Drive

**APPLICANT:** Felipe Ortiz

**REQUEST:**

- A variance to the front yard setback regulations of 11' 2" is requested in conjunction with constructing an approximately 590 square foot (19' x 31') swimming pool on a lot developed with a one story single family home that, according to calculations made by the Board Administrator from the submitted site plan, has an approximately 1,300 square foot building footprint.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

**GENERAL FACTS:**

- A 25' front yard setback is required in the R-7.5(A) zoning district.

- The subject site/lot has two, 25' front yard setbacks: one along Reverchon Drive, the other along Plymouth Road.
- The proposed swimming pool would be located 13' 10" from the Plymouth Road front property line or 11' 2" into the 25' front yard setback.
- The Dallas Development Code states the following with regard to front yard provisions for residential district:
  - If a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets. If access is prohibited on one frontage by plat or by the city, the following structures in the yard along that frontage are governed by the rear yard regulations: swimming pool, game courts, fences, garages, accessory storage buildings."
- The site is deemed to have two front yard setbacks since the site is a full "block-deep" (ranging from 115' – 127' in depth) with its western edge along Reverchon Drive and its eastern edge along Plymouth Road, and since Building Inspection has interpreted that access to the site along Plymouth Road is NOT prohibited by plat nor can be prohibited by the city. As a result, the applicant has made a request for a variance to the front yard setback regulations to locate a swimming pool in the site's Plymouth Road front yard setback.
- A site plan has been submitted that denotes the following:
  - A proposed swimming pool located 13' 10" from the site's front property line on Plymouth Road.
  - An "exist. 6' wood fence" located in the Plymouth Road front yard setback.
  - The existing house on the site located 25' from the Reverchon Drive front property line.

Note that the application has only requested a variance to "construct a swimming pool in a double front yard (per city requirements)." No application has been made to address the fence that exceeds 4' in height in the Plymouth Road front yard setback.

- The submitted site plan indicates that almost half of the proposed approximately 590 square foot swimming pool would be located in the 25' Plymouth Road front yard setback.
- The site is flat, somewhat irregular in shape (115' on the north, 127' on the south, 70' on the east, and 57' on the west), and approximately 7,700 square feet in area. The site is zoned R-7.5 (A) where lots are typically 7,500 square feet in area. The zoning map indicates that a small section of the site's southeastern corner is located in flood plain. The site has two, 25' front yard setbacks.
- The subject site is developed with, according to DCAD records, a single family home that is in "very good" condition, built in 1944 with 1,061 square feet of living area.
- Although the site plan indicates a "Exist 6' wood fence" that is located in the Plymouth Road front yard setback and therefore restricted to a height not to exceed 4', the applicant has chosen to not make application for a special exception to the fence height regulations.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: R-7.5 (A)(FP) (Single family district 7,500 square feet, Flood Plain)

North: R-7.5 (A) (Single family district 7,500 square feet)  
South: R-7.5 (A)(FP) (Single family district 7,500 square feet, Flood Plain)  
East: MF-2 (A) (Multifamily)  
West: R-7.5 (A) (Single family district 7,500 square feet)

### **Land Use:**

The subject site is developed with a single family home. The areas to the north, south, and west are developed with single family uses; and the area to the east is developed with multifamily uses.

### **Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

### **Timeline:**

- Jan. 27, 2006      The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Feb. 15, 2006:      The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Feb. 16, 2006:      The Board Administrator wrote the applicant a letter that conveyed the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the March 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Feb. 27, 2006:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the

Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

No review comment sheets with comments were submitted in conjunction with this application.

### **STAFF ANALYSIS:**

- The site is flat, somewhat irregular in shape (115' on the north, 127' on the south, 70' on the east, and 57' on the west), and approximately 7,700 square feet in area.
- The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area. The zoning map indicates that a small section of the site's southeastern corner is located in flood plain. The site has two, 25' front yard setbacks.
- The site is currently developed with a one story single family home that, according to calculations made by the Board Administrator from the submitted site plan, has an approximately 1,300 square foot building footprint, and according to DCAD has 1,061 square feet of living space.
- According to calculations taken from the submitted site plan, the proposed swimming pool would be 590 square feet in area of which about half (300 square feet) would be located in one of the site's two front yard setbacks.
- The applicant has the burden of proof in establishing the following related to the front yard variance request:
  - That granting the variance to the front yard setback regulations of 11' 2" to construct and maintain a 590 square foot swimming pool in one of the site's two front yard setbacks will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance to the front yard setback regulations of 11' 2" requested to construct and maintain a 590 square foot swimming pool is necessary to permit development of the subject site (developed with a single family home with a building footprint of about 1,300 square feet) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5 (A) zoning classification.
  - The variance to the front yard setback regulations of 11' 2" requested to construct and maintain a 590 square foot swimming pool would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5 (A) zoning classification.
- If the Board were to grant the front yard variance request of 11' 2", imposing a condition whereby the applicant must comply with the submitted site plan, the only structure that would be permitted to encroach into a front yard setback would be a

swimming pool that would be 13' 10" from the site's Plymouth Road front property line (or 11' 2" into the 25' Plymouth Road front yard setback).

- As of March 3rd, no letters had been submitted to staff in opposition or support to the requests.
- Note that granting a variance request to the front yard setback regulations would not provide any relief to the applicant with regard to the "exist 6' wood fence" noted to be located in the site's Plymouth Road front yard setback on the submitted site plan. The Dallas Development Code states that "a fence may not exceed four feet above grade when located in the required front yard."

**FILE NUMBER:** BDA 056-019(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Jesus Gonzalez for a variance to the front yard setback regulations at 732 West Clarendon Drive. This property is more fully described as Lot 3 in City Block B/3513 and is zoned R-7.5(A) which requires a front yard setback of 25 feet. The applicant proposes to maintain an addition (porch) and provide a 19 foot front yard setback, which would require a variance of 6 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 732 West Clarendon Drive

**APPLICANT:** Jesus Gonzalez

**REQUEST:**

- A variance to the front yard setback regulations of 8' is requested in conjunction with maintaining an addition on a single family dwelling.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

**GENERAL FACTS:**

- This case was held under advisement on February 13, 2006 due to the applicant providing a revised site plan that increased the variance request from 6' to 8'. The increase in the variance request requires for the notices and advertising to be done again reflecting the revised request.

- A 25'-front yard setback is required in the R-7.5(A) zoning district.
- The site is slightly sloped, rectangular in shape (58' x 130'), and approximately 7,540 square feet in area.
- A typical lot size in the R-7.5(A) zoning district is 7,500 square feet for single family structures.
- A site plan has been submitted that indicates the area of the addition, specifically a front porch, to be located in the 25'-front yard setback is approximately 82.8 square feet (6' x 13.8'). The area of the front porch is approximately 110.4 square feet (8' x 13.8').
- The revised site plan indicates that the porch addition provides an 18' front yard setback. The revised area of the front porch is approximately 158.7 square feet (11.5' x 13.8'). Of that front porch, approximately 103.5 square feet is encroaching into the front setback (7.5' x 13.8')
- DCAD records indicate that the site is developed with a 1,092 square foot single family structure in average condition built in 1926.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

<u>Site:</u>	R-7.5(A) (Single Family Residential 7,500 square feet)
<u>North:</u>	R-7.5(A) (Single Family Residential 7,500 square feet)
<u>South:</u>	R-7.5(A) (Single Family Residential 7,500 square feet)
<u>East:</u>	R-7.5(A) (Single Family Residential 7,500 square feet)
<u>West:</u>	R-7.5(A) (Single Family Residential 7,500 square feet)

#### **Land Use:**

The subject site is developed with a single family use. The area to the south, east, and west are developed with single family uses. The area to the north is undeveloped.

#### **Zoning/BDA History:**

There have been no recent Board of Adjustment requests in the immediate area.

#### **Timeline:**

- Sept. 19, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 19, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- January 26, 2006 Senior Planner Dominguez contacted the applicant and relayed information on the Board of Adjustment public hearing.

January 27, 2006: Senior Planner Hiromoto mailed a letter to the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the February 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

January 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Development Services Transportation Engineer, Senior Planner Hiromoto, and the Assistant City Attorney to the Board.

No review comment sheets with comments were submitted in conjunction with this application.

### **STAFF ANALYSIS:**

- The existing front porch was expanded by 3'.
- A revised site plan has been submitted subsequent to the February 13, 2006 public hearing that indicates that the porch addition provides an 18' front yard setback. The revised area of the front porch is approximately 158.7 square feet (11.5' x 13.8'). Of that front porch, approximately 103.5 square feet is encroaching into the front setback (7.5' x 13.8')
- A portion of the single family structure, including the front porch, encroaches in to the front yard setback.
- The elevation submitted indicates the addition to the front porch is 3'.
- The plat map indicates the request site is approximately 7,540 square feet.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the revised site plan, the amount of additional encroachment into

the front yard setback would be limited in this case to an area of approximately 103.5 square feet.

- The applicant has the burden of proof in establishing the following:
  - That granting the variance of 8' to the front yard setback will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The front yard setback variance of 8' is necessary to permit development of the subject site (that is slightly sloped, rectangular in shape (58' x 130'), and approximately 7,540 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
  - The front yard setback variance of 8' would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- Granting this variance would allow approximately 103.5 square feet of an addition on a single family dwelling unit to encroach 8' into the 25' front yard setback.